

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.167 OF 2005**

Arvind Ramchandra Arwade

...Appellant

vs.

Sudhakar Ramchanra Arwade & Ors.

...Respondents

Mr.M.K.Nesari for the Appellant

Mr.S.G.Deshmukh for the Respondents

**CORAM: A.S.OKA,J.
DATE : MARCH 3,2005.**

P.C.:

1. Heard Counsel appearing for the parties. The only dispute is regarding the land held on lease standing in the name of Ganpat. The Courts below have held that the Appellant or no other family member has any right, title or interest in respect of the said land and that it was an exclusive property of deceased Ganpat.

2. Shri Nesari submitted that in the 'Smaran Yadi' to which deceased Ramchandra was party specifically refers to this land as forming part of the joint property. He submitted that the inclusion of this land in 'Smaran Yadi' is more than sufficient to establish that all the parties were entitled to claim share in the land. He, therefore, submitted that the Courts below have committed an error by holding that there cannot be any partition in respect of the said land.

3. I have considered the submissions. Apart from recording a finding that 'Smaran Yadi' does not contain description of the

said land, there are other factual aspects which are considered by the Courts below and the findings of fact have been recorded. The Appellate Court has found that during the life time of deceased Ramchandra, he never asserted that the land in question was not the exclusive property of Ganpat. The Appellate Court has also considered the fact that a part of the said land was acquired for public purpose and compensation was shared by the landlord and deceased Ganpat and no part of compensation was paid to Ramchandra. Apart from these aspects, the Appellate Court has also referred to evidence of the representative of the landlord. After considering all these factors a finding of fact has been recorded that the said land could not be subjected to partition as it was exclusive property of deceased Ganpat.

4. The findings of fact recorded are based on consideration of oral and documentary evidence on record. Even assuming that a different view is possible to be taken on the basis of evidence on record, interference under Section 100 of Code of Civil Procedure, 1908 is not permissible. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE.